IN THE

Supreme Court of the United States

——— Term 1979

No. 79-49

JAMES T. M. PREST,

Appellant,

vs.

ROBERT L. HERBST, (predecessor to incumbent JOSEPH N. ALEXANDER), Individually and as Commissioner of the Minnesota Department of Natural Resources; ANDREW KORDA, (predecessor to incumbent RUSSELL PETERSON) individually and as Auditor for St. Louis County; the STATE OF MINNESOTA, LEE VANN (predecessor to incumbent David L. Printy), as Commissioner of the Minnesota Department of Economic Development; ARTHUR C. ROEMER (predecessor to incumbent Clyde E. Allen, Jr.) as Commissioner of the Minnesota Department of Revenue, and the MINNESOTA CHIPPEWA TRIBE,

Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of the State of Minnesota on the grounds that the questions presented do not present substantial federal questions and are so unsubstantial as not to need further argument, and that the judgment of the Minnesota Supreme Court and District Court rests on an adequate non-federal basis.

OPINION BELOW

The Opinion of the Minnesota Supreme Court (Contos, et al v. Herbst, et al, No. 47346, filed January 26, 1979, Rehearing denied March 13, 1979) is reported at 278 N.W.2d 732, and is reproduced in Appellant's Jurisdictional Statement at page A 109 and following. Appellant's Jurisdictional Statement also reproduces the Memorandum Opinion of the District Court, pages A 56-69, and the Findings of Fact, Conclusions of Law, and Order for Judgment, pages A 70-87.

JURISDICTION

Appellant Prest invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257 (2). However, as discussed below, the Court should note that the Minnesota Supreme Court decided that a portion of the statute in questior was invalid.

QUESTIONS PRESENTED

Appellant Prest asserts in essence that Minnesota's tax of $.25 per acre ($10 per 40 acres) on severed mineral interests is confiscatory and, as a flat minimum tax applied to severed mineral interests not otherwise taxed, that it is constitutionally impermissible because it is unrelated to value. Both questions were exhaustively and carefully considered at trial, in briefs, and in the decision of the District Court which was unanimously affirmed by the Minnesota Supreme Court. In addition, Appellant Prest, acting alone and as attorney pro se, requested and was refused a rehearing by the Minnesota Supreme Court on these same matters. (See Appellant's Jurisdictional Statement, pages A-144-149, Petition for Rehearing,

and pages A-158 and 159, Order Denying Petition for Rehearing.) (For the purpose of keeping the entire picture of the taxation and registration of severed mineral interests in proper perspective, it should here be noted that Appellant Prest fails in his Jurisdictional Statement to point out that the Minnesota Legislature, at its recently adjourned session, enacted amendments to the severed minerals registration law which required the giving of notice to the last owner of record of severed mineral interests of the opportunity for court hearing prior to forfeiture for failing to timely register severed mineral interests. The act also validates certain alleged defects in past filings and provides opportunities for correction of others. The law was enacted in response to the Minnesota District and Supreme Court determination that procedures relating to forfeiture for failure to timely register were unconstitutional due to lack of adequate notice and opportunity for hearing. This recent enactment, Laws of Minnesota 1979, Chapter 303, Article 10, Sections 1, 2 and 5, is reproduced at A-2 of this document. This enactment represents a continuation of the long-standing and careful interest shown in the subject by the Minnesota Legislature, beginning in 1969 with the enactment of the basic provisions of the severed mineral registration law, which were intended to identify and clarify the obscure and fractionalized ownership condition of severed mineral interests in Minnesota.)

STATUTES INVOLVED

The statutes involved are not only Minnesota Laws 1973, Chapter 650, Article XX, but also the underlying laws which were amended by that 1973 law.

As mentioned above, the Legislature first enacted a severed mineral registration act in 1969. (Laws 1969, Ch. 829, coded as Minn. Stats., Secs. 93.52-93.58. (See A-7).) The penalty for failing to register under this 1969 act was the possibility that the Commissioner of Natural Resources might lease the owner's minerals and keep the rentals and royalties until such time as the owner asserted his interest and utilized statutory procedures to obtain an assignment of the lease from the Commissioner. This statute prompted few registrations and failed to make any substantial improvement in the condition of ownership records of severed minerals. (See Opinion of Minn. Sup. Ct., January 26, 1979, at A-129 and 130 of Appellant's Jurisdictional Statement). As a consequence, by Laws 1973, Chapter 650, Article XX, the Legislature in 1973 amended the 1969 act by imposing a penalty of forfeiture for failing to timely register. This 1973 law also imposed a tax of $.25 per acre ($10 per 40 acre tract) on otherwise untaxed severed mineral interests. According to the legislative purposes stated in Section 1 of Laws 1973, Ch. 650, Article XX, (coded as Minn. St., Sec. 272.039) the tax was enacted to end the de facto tax-exempt status of most severed mineral interests and also to further the cause of promoting up-to-date records of ownership of these interests. Severed mineral tax revenues are distributed by the county auditor as follows: (1) 80 percent is apportioned to the local taxing districts in the same proportion as the surface interest mill rate of a district bears to the total mill rate applicable to surface interests in the area taxed, and

(2) 20 percent is apportioned to the state treasurer to be deposited in special accounts dedicated to business loans for reservation and non-reservation Indians. (See Sec. 4 of Laws 1973, Ch. 650, Art. XX, coded as Minn. Stat. Sec. 362.40). The loan accounts are administered by state department of economic development.

STATEMENT OF THE CASE

From the above discussion it is apparent that the Minnesota Legislature, for the past decade, has been wrestling with problems associated with the ownership of obscure and fractionalized severed mineral interests. It is significant to note that the Minnesota Supreme Court found that "Plaintiffs [which included Mr. Prest] do not seriously quarrel with the purpose of the act, which is to identify and clarify the obscure and divided ownership conditions of severed mineral interests in order to facilitate their development. Minn. Stat. 93.52, Subd. 1." (Jan. 26, 1979, Opinion of the Minn. Sup. Ct., Appellants' Jurisdictional Statement, at A-129).[1] No thoughtful consideration can be given to the validity of the laws in question without recognizing the basic problem of obscure and fractionalized ownership, and that no party, including Prest, seriously quarreled with the legislative purposes of identifying and clarifying the ownership interests.

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[1] District Court Findings No. 32 and 33, printed on page A-83 of Appellants' Jurisdictional Statement, state as follows: "(32) The ownership of severed mineral interests has become more and more fractionalized with the passage of time. In some cases individual interests may amount to less than 0.5%, and fractional interests with denominators such as 18809 or 37618 are not uncommon.

(33) The obscurity and fractionalization of severed mineral interests has rendered the identification of severed mineral interests in this state generally expensive, inconvenient, and in some cases impossible, and has impeded mineral development."

Similarly, the fact that most severed mineral interests have escaped taxation is one which must be recognized in any thoughtful consideration of the subject. The Minnesota Courts both quoted with approval from the brief amicus curiae of Mr. W. K. Montague in the case of *Kangas-Jacobsen Dairy, Inc. v. Lloyd-Smith*, 241 Minn. 317, 62 N.W.2d 915 (1954):

> "In a substantial number of cases the reservations [severed mineral interests] were created as a result of the tax laws, and do not represent arm's length negotiations between parties . . . . *They represent deliberate attempts to arrange a transaction under which the grantor could retain for generations his speculative interest in minerals without carrying charges*, and, if merchantable ore should ever be discovered, could reacquire the surface without cost." (Emphasis added.) (See June 14, 1976, District Court Opinion, page A-80 of Appellant's Jurisdictional Statement and January 26, 1979, Supreme Court Opinion, page A-115).

In this connection the Supreme Court noted in its January 26, 1979, opinion (at page A-115, Appellant's Jurisdictional Statement) that

> "[t]he district court specifically found that 140,000 to 145,000 acres of the 721,640 acres of severed mineral interests owned by plaintiff United States Steel were created through a series of transactions between United States Steel and its subsidiaries whose purpose was to avoid ad valorem property taxes on property valuable primarily for its mineral potential. The district court further found that plaintiffs paid ad valorem property taxes on approximately 3,212 of their 1,262,664 acres of severed mineral interests."

A footnote states that of the 3,212 acres which were taxed, the majority were taxed at the then $1.00 per acre *maximum* tax which was imposed on known unmined taconite deposits by Minn. Stats., Sec. 298.26. Appellant's Jurisdictional Statement, A-161 and 162 sets forth a table showing the acreage of severed mineral interests owned by each plaintiff and the acreage subject to ad valorem taxes of one kind or another. It is interesting to note that only .25% of the total acreage was being taxed. It is also interesting to note that U. S. Steel was paying a total tax of $2,885.32 on its 721,640 acres of severed mineral interests.

From the above it is apparent that the obscure and fractionalized ownership condition of severed mineral interests, and the de facto tax exempt classification of most severed mineral interests were and are public policy matters of great magnitude to the Minnesota Legislature, especially over a period of time when real property taxes on homes and businesses were rising at such rates as to prompt taxpayer revolts in some jurisdictions.

It is significant that Appellant Prest has avoided these fundamentals when requesting his appeal. As the owner of 91,000 acres of severed mineral interests (upon which he paid taxes on 740 acres in 1974; A-161 of Appellant's Jurisdictional Statement), and as one who acquires these interests by exchange, purchase, and as compensation for his services as a lawyer (see Stipulation, A-47, and District Court Finding No. 5, A-72, Appellant's Jurisdictional Statement) he has a vested interest in restoration of the de facto tax-exempt classification for severed mineral interests. As the individual Plaintiff with the largest holdings by far of severed mineral interests, he was a plaintiff from the beginning of the lawsuit in October of 1974. He joined in retaining the law firm of Hanft, Fride,

O'Brien and Harries as counsel for the plaintiffs. This firm is noted for its special skill and knowledge in mineral matters. (Plaintiffs included not only individuals such as as Mr. Prest, but also corporate giants as U. S. Steel, Burlington Northern Railroad, Boise Cascade Corporation, and the First and Northwestern National Banks of Minneapolis.) An example of the nature of the legal services performed by the Hanft, Fride law firm is the firm's representation of Reserve Mining Company in complex and protracted litigation involving a variety of questions, including tax questions, before state and federal agencies and courts, including this court. Appellant Prest expressed no dissatisfaction with the firm's work either during district court proceedings, (which extended from an order to show cause in October 1974, through a hearing on July 8, 1976, on a motion for amended findings), or during Minnesota Supreme Court proceedings which extended from notice of appeal in October 1976 through briefing and oral argument in 1977, and finally the issuance of that Court's opinion on January 26, 1979, However, after that date, Appellant Prest alone among all of the individual and corporate plaintiffs, acting as attorney pro se, has raised questions which have been considered and determined by both the Minnesota District and Supreme Courts, after full and complete trial at the District Court level, exhaustive briefing and thorough argument at both the District and Supreme Court levels, and unusually careful and extended deliberation by both the District and Supreme Courts. The Supreme Court, without dissent, affirmed the District Court in all respects. None of the other of the many parties to the proceeding, neither plaintiff nor defendant, requested a rehearing or chose to appeal. Mr. Prest has known his position since at least February 5, 1979, when he requested an extension of time in which to file his request for

a rehearing with the Minnesota Supreme Court, stating that he "was advised late this morning, much to my surprise, that the attorneys for the principal Plaintiffs-Appellants, did not intend to petition for rehearing of the Court's decision of the above entitled matter filed January 26, 1979." (This letter is reproduced at A-1 of this document). These are essentially the same reasons advanced by Appellant Prest in his request to this Court for an extension of time in which to file his jurisdictional statement.

ARGUMENT

I. A TAX OF $.25 PER ACRE ($10 PER 40 ACRES) ON SEVERED MINERAL INTERESTS IS NOT CONFISCATORY UNDER CIRCUMSTANCES WHERE MOST SEVERED MINERAL INTERESTS CONSTITUTED A DE FACTO TAX-EXEMPT CLASS OF PROPERTY.

When considering this question, it is important to note that Appellant Prest chooses to confuse the value of severed mineral interests, an interest in real property, with the value of any metal which may exist on a given tract of ground, a distinction which is important for real property classification purposes. The Minnesota Supreme Court was not confused in this regard. The Court carefully analyzed the District Court's findings and the applicable law in regard to value in parts 1 and 2 of its Opinion (Opinion January 26, 1979, at pages A-116-128, Appellant's Jurisdictional Statement). In so doing it noted at page A-120 that no one contested the District Court finding that "*every mineral interest in Minnesota has some value as a property interest regardless of its location* . . .", even though these values may vary widely from one part

of the state to another. The Court also noted at page A-123 that other laws impose taxes on severed minerals where the value of the minerals themselves is determined, and in these situations the minimum tax of $.25 per acre would not apply.[2] In addition, the Minnesota Supreme Court quoted favorably from another District Court finding at page A-118 that "[p]laintiffs have failed to demonstrate that . . . 'unsevered' mineral rights have, like severed mineral interests, escaped ad valorem taxation". The Court concluded, on the basis of its analyses, that "[a] Class of property having some value [severed mineral interests] was not paying its proportionate share of taxes".

In making his arguments about confiscation, Appellant Prest conveniently refers to his own testimony on value to the exclusion of testimony and related evidence presented by St. Louis County Assessor Peter Handberg, upon which the trial court found that

> "[t]he *average* ad valorem property tax on 40 acres of undeveloped rural land in Saint Louis County in 1975 was slightly over $18.00. However, in 1975 (for 1976 taxes) the assessor doubled the value of most lands in this category. Because of statutory limitations the full effect of this increase on property taxes will not be felt until 1979, but at that time, if the current rate of increase continues, the *average ad valorem tax on 40 acres of undeveloped rural land will be approximately $38.00.*" (District Court Finding 28, A-81-82, Appellant's Jurisdictional Statement).

[2] These other laws include the $10 per acre *maximum* tax on known but unmined taconite and iron sulphides, a tax which has almost no relationship to value; Minn. Stat. Sec. 298.26.

In spite of all of the above, the Supreme Court took notice of the possibility that on some tracts the tax may exceed the value of the property, and specifically addressed the Constitutional question Appellant Prest raises in regard to the "exercise of a different and forbidden power":

> "Plaintiffs made a further argument that a tax which exceeds the value of the property tax is unconstitutional. The test whether a tax statute violates the due process clause of the Fourteenth Amendment is whether the tax is within the lawful power of the legislature. The due process clause is applicable only if the tax is so arbitrary as to compel the conclusion that the statute does not involve the exercise of the taxing power but a direct *exercise of a different and forbidden power*. A. Magnano Co. v. Hamilton, 292 U. S. 40, 54 S.Ct. 597, 78 L. ed. 1109 (1934). Any attempt to determine the constitutionality of a tax by its amount furnishes 'no juridical ground for striking down a taxing act.' 292 U. S. 47, 54 S. Ct. 602, 78 L. ed. 1116.
>
> *On this record we cannot say that the tax imposed on severed mineral interests is so arbitrary as to violate due process. The record clearly establishes that severed mineral interests were not paying any taxes, that some severed mineral interests were created to avoid ad valorem taxation, and that severed mineral interests have some value. The legislature's response, which assures that all severed mineral interests will pay at least some tax, is not unreasonable as an exercise of its power to tax.*" (Emphasis added.) (Opinion January 26, 1979, at page A-127 of Appellant's Jurisdictional Statement.)

The record is full and clear in regard to this first question raised by Appellant Prest. His counsel specifically devoted at least three pages of his appeal brief to the subject. Defendant's responsive brief contained at least the same number of pages on the subject. The Minnesota District and Supreme Courts made their decisions after thorough briefing and deliberation. The issue has been well considered and decided. The issue should remain at rest.

II. A FLAT MINIMUM RATE OF $.25 PER ACRE ($10 PER 40 ACRES) ON SEVERED MINERAL INTERESTS NOT OTHERWISE TAXED IS PERMISSIBLE UNDER MINNESOTA AND FEDERAL CONSTITUTIONS.

In making his contrary assertion, Appellant Prest is reluctant to recognize the reality that Minnesota's Constitution has not required real property taxes to be based upon value since the 1906 adoption of the "wide open tax amendment" to the Minnesota Constitution. In addition, Appellant Prest assumes erroneously that the Minnesota Supreme Court ignored the question of value entirely in its deliberations.

In fact, the Minnesota Supreme Court, in its January 26, 1979 Opinion (A-126, Appellant's Jurisdictional Statement) held as follows, after recalling the Constitutional history of Minnesota's "wide open tax amendment" and related case law:

> ". . . It is true that this court said, in reference to the uniformity clause, that it does not permit the adoption of an arbitrary yardstick of valuation for all properties which ignores their differences in actual market value. [Hamm v. State], 255 Minn. 70, 95 N.W.2d 654. Here however, none of the parties contest the fact that severed mineral interests cannot readily be valued. Taken together with the district court's finding that *every mineral interest has some value as a property interest regardless of its location*, the uniform tax imposed on severed mineral interests represents a reasonable exercise of the legislature's authority to tax a class of real property that has escaped taxation." (Emphasis added.)

What the Minnesota Constitution (Minn. Const. Art. 10, § 1) requires in regard to taxation, according to the Minnesota Supreme Court, is uniformity, and that a legislative classification based upon a reasonable basis in fact will not be disturbed (Opinion January 26, 1979, pages A-116 and 117, Appellants Jurisdictional Statement.)

The Court took pains to relate these Minnesota constitutional requirements to federal constitutional requirements and applicable decisions of state and U. S. Supreme Courts. In its January 26, 1979 Opinion (A-116, footnote 2, Appellant's Jurisdictional Statement) it stated:

> "[2] The uniformity clause of our state constitution is no more restrictive upon the legislature's power to tax or classify than is the Equal Protection Clause of the Fourteenth Amendment. Elwell v. County of Hennepin, 301 Minn. 63, 221 N. W. 2d 538 (1974). The United States Supreme Court has stated that where taxation is concerned and no specific Federal right, other than equal protection, is involved, the states have considerable discretion. Lehnhausen v. Lake Shore Auto Parts Co. 410 U.S. 356, 93 S. Ct. 1001, 35 L. ed. 2d 351 (1973)."

The Minnesota Supreme Court further noted that

> "[4] The United States Supreme Court has also recognized practical considerations as sufficient bases for state tax

classifications. See Lehnhausen v. Lake Shore Auto Parts Co. 410 U.S. 356, 93 S. Ct. 1001, 35 L. ed. 2d 351 (1973); Madden v. Kentucky, 309 U. S. 83, 60 S. Ct. 406, 84 L. ed. 590 (1940)." (Opinion January 26, 1979; A-121, Appellant's Jurisdictional Statement.)

Once again the Minnesota Supreme Court's decision was based upon a trial court record which included extensive testimony on value, from a variety of Plaintiffs and Defendants witnesses, and upon extensive briefing and argument. No other single issue was more thoroughly aired, both factually and legally. Once again, the issue has been well decided and should remain at rest.

CONCLUSION

Appellant Prest, alone of all the individual and corporate plaintiffs, appears dissatisfied with his representation at proceedings before the Minnesota District and Supreme Courts. However, his dissatisfaction appears to have arisen only after the January 26, 1979 decision of the Minnesota Supreme Court. He alone is perpetuating the lengthy litigation which properly should have ended with the Minnesota Supreme Court decision on January 26, 1979. His questions do not present substantial federal questions. In addition, his questions are so insubstantial as to need no further argument. Finally, the judgment of the Minnesota Supreme and District Courts rests on an adequate non-federal basis. Therefore, Appellees respectfully move the Court to dismiss this Appeal or in the alternative, to affirm the judgment entered in this matter by the Supreme Court of Minnesota.

Respectfully submitted,

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Dated: August 7, 1979.

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APPENDIX

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February 5, 1979

Hon. Robert J. Sheran
Chief Justice
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St. Paul, Minnesota 55101
Clerk's File No. 47346
Attn: Mr. John C. McCarthy
Clerk of the Supreme Court

Re: Allison Contos, et al, Appellants, vs. Robert L. Herbst, Individually, and as Commissioner of the Minnesota Department of Natural Resources, et al, Respondents, Andrew Korda, Individually, and as Auditor for St. Louis County, Respondent, Minnesota Chippewa Tribe, Respondent.

Dear Mr. McCarthy:

This letter will confirm my telephone conversation of Monday, February 5, 1979. I am one of the Plaintiffs-Appellants in the above-entitled matter. I was advised late this morning, much to my surprise, that the attorneys for the principal Plaintiffs-Appellants, did not intend to petition for rehearing of the Court's decision of the above-entitled matter filed January 26, 1979.

I respectfully petition the Court to grant to me an extension of time within which to file such a Petition for Rehearing pursuant to Rule 140 Civil Appellate Procedure. I ask that such an extension be granted until Tuesday, February 13, 1979.

I enclose my check drawn to the order of John McCarthy, Clerk, in the amount of $25.00, the filing fee for a Petition for Rehearing.

Yours very truly,
JAMES T. PREST

JTP:jf
cc: C. Paul Faraci, Phillip J. Olfelt and Stephen G. Thorne
Leo M. McDonnell
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LAWS 1979, CHAPTER 303, ARTICLE X, SECTIONS 1, 2, 5 AND 23

ARTICLE: X MISCELLANEOUS

Section 1. Minnesota Statutes 1978, Section 93.55, is amended to read:

93.55 Failure to file, or re-file; forfeiture after notice and hearing; leasing; recovery of fair market value of forfeited interest

Subdivision 1. If the owner of a mineral interest fails to file the verified statement required by section 93.52, before January 1, 1975, as to any interests owned on or before December 31, 1973, or within one year after acquiring such interests as to interests acquired after December 31, 1973, and not previously filed under section 93.52, the mineral interest shall forfeit to the state after notice and opportunity for hearing as provided in this section.

Subd. 2. The commissioner shall notify the last owner of record on file in either the county recorder's or registrar of titles' office of a hearing on an order to show cause why the mineral interest should not forfeit to the state absolutely. The notice shall be served in the same manner as provided for the service of summons in a civil action to determine adverse claims under chapter 559 and shall contain the following: (1) the legal description of the property upon or beneath which the interest exists; (2) a recitation that the statement of severed mineral interest either did not comply with the requirements specified by section 93.52 for such a statement or was not filed within the time specified in section 93.55, or both; and (3) that the court will be requested to enter an order adjudging the forfeiture of the mineral interest to be absolute in the absence of a showing that there was substantial compliance with laws requiring the registration and taxation of severed mineral interests. For the purposes of this section, substantial compliance with laws requiring the registration and taxation of severed mineral interests means: (1) that the records in the office of the county recorder or registrar of titles specified the true ownership of the severed mineral interest during the time period within which the statement of severed mineral interest should have been registered with the county recorder or the registrar of titles, or that probate, divorce, bankruptcy, mortgage foreclosure, or other proceedings affecting the title had been timely initiated and diligently pursued by the true owner during the time period within which the severed mineral interest statement should have been registered, and (2) that all taxes relating to severed mineral interests had been timely paid, including any taxes which would have been due and owing under section 273.13, subdivision 2a, had the interest been properly filed for record as re-

quired by section 93.52 within the time specified in section 93.55. For the purposes of this section, "timely paid" means paid within the time period during which tax forfeiture would not have been possible had a real property tax been assessed against the property.

Subd. 3. After the forfeiture of the mineral interest is adjudged to be absolute, the mineral interest may be leased in the same manner as provided in section 93.335, for the lease of minerals and mineral rights becoming the absolute property of the state under the tax laws, except that no permit or lease issued pursuant to this section shall afford the permittee or lessee any of the rights of condemnation provided in section 93.05, as to overlying surface interests.

Subd. 4. After the mineral interest has forfeited to the state pursuant to this section, a person claiming an ownership interest before the forfeiture may recover the fair market value of the interest, either: (1) as an alternative claim raised in the hearing on the order to show cause why the mineral interest should not forfeit absolutely, with fair market value to be determined and paid as provided in this subdivision, or (2) in a separate action brought as follows. An action may be commenced within six years after the forfeiture under this section to determine the ownership and the fair market value of the mineral interests in the property both at the time of forfeiture and at the time of bringing the action. The action shall be brought in the manner provided in chapter 559, for an action to determine adverse claims, to the extent applicable. The person bringing the action shall serve notice of the action on the commissioner of natural resources in the same manner as is provided for service of notice of the action on a defendant. The commissioner may appear and contest the allegations of ownership and value in the same manner as a defendant in

such actions. Persons determined by the court to be owners of the interests at the time of forfeiture to the state under this section may present to the commissioner of finance a verified claim for refund of the fair market value of the interest. A copy of the court's decree shall be attached to the claim. Thereupon the commissioner of finance shall refund to the claimant the fair market value at the time of forfeiture or at the time of bringing the action, whichever is lesser, less any taxes, penalties, costs, and interest which could have been collected during the period following the forfeiture under this section, had the interest in minerals been valued and assessed for tax purposes at the time of forfeiture under this section. There is appropriated from the general fund to the persons entitled to a refund an amount sufficient to pay the refund.

Subd. 5. The forfeiture provisions of this section do not apply to mineral interests valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil, or other similar interests, so long as a tax is imposed and no forfeiture under the tax laws is complete. However, if the mineral interest is valued under the other tax laws, but no tax is imposed, the mineral interest forfeits under this section if not filed as required by this section.

Sec. 2. Minnesota Statutes 1978, Chapter 93, is amended by adding a section to read:

93.551 Validation of certain statements; correction of certain errors

A statement of severed mineral interests which was filed within the time limits specified by section 93.55 is validly and timely filed even if the interest claimed by the owner does not correctly set forth the whole or fractional interest actually owned; the statement erroneously contained interests from

more than one government section; the statement was not properly verified; or the interest, if registered property, was erroneously filed with the county recorder, or, if the interest was not registered property, was filed with the registrar of titles. The owner may file an amendment or supplement to the original statement for the purpose of correcting any or all of the errors described in this section.

* * * * *

Sec. 5. Minnesota Statutes 1978, Section 273.13, Subdivision 2a, is amended to read:

Subd. 2a. Class 1b. "Mineral interest", for the purpose of this subdivision, means an interest in any minerals, including but not limited to gas, coal, oil, or other similar interest in real estate, which is owned separately and apart from the fee title to the surface of such real property. Mineral interests which are filed for record in the offices of either the county recorder or registrar of titles, whether or not filed pursuant to sections 93.52 to 93.58, constitute class 1b, and shall be taxed as provided in this subdivision unless specifically excluded by this subdivision. A tax of $.25 per acre or portion of an acre of mineral interest is hereby imposed and is due and payable annually. If an interest is a fractional undivided interest in an area, the tax due on the interest per acre or portion of an acre is equal to the product obtained by multiplying the fractional interest times $.25, computed to the nearest cent. However, the minimum annual tax on any mineral interest is $2. No such tax on mineral interests is due and payable on the following: (a) Mineral interests valued and taxed under other laws relating to the taxation of minerals, gas, coal, oil, or other similar interests; (b) Mineral interests which are exempt from taxation pursuant to constitutional or related statutory provisions. Tax money received under this subdivision

shall be apportioned to the taxing districts included in the area taxed in the same proportion as the surface interest mill rate of a taxing district bears to the total mill rate applicable to surface interests in the area taxed. The tax imposed by this subdivision is not included within any limitations as to rate or amount of taxes which may be imposed in an area to which the tax imposed by this subdivision applies. The tax imposed by this subdivision shall not cause the amount of other taxes levied or to be levied in the area, which are subject to any such limitation, to be reduced in any amount whatsoever. The tax imposed by this section is effective for taxing years beginning January 1, 1975. Twenty percent of the revenues received from the tax imposed by this section shall be distributed under the provisions of section 362.40.

* * * * *

Sec. 23. Effective date. Sections 1, 2, 5, 14, 15 and 18 to 20 are effective the day following final enactment. Sections 6 and 9 to 12 are effective for gasoline and special fuel sold after December 31, 1979. Sections 7 and 8 are retroactively effective June 1, 1973.

Approved June 1, 1979.

LAWS OF MINNESOTA FOR 1969, CHAPTER 829

CHAPTER 829—S. F. No. 1966

[Coded]

An act relating to minerals; authorizing the state to issue permits to prospect for, and leases to mine, certain minerals where mineral interests have been severed from the surface interests.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [93.52] Minerals; severed interests; registration. Subdivision 1. The purpose of this act is to identify

and clarify the obscure and divided ownership condition of severed mineral interests in this state. Because the ownership condition of many severed mineral interests is becoming more obscure and further fractionalized with the passage of time, the development of mineral interests in this state is often impaired. Therefore, it is in the public interest and serves a public purpose to identify and clarify these interests.

Subd. 2. Except as provided in subdivision 3, from and after January 1, 1970, every owner of a fee simple interest in minerals, hereafter referred to as a mineral interest, in lands in this state, which interest is owned separately from the fee title to the surface of the property upon or beneath which the mineral interest exists, shall file for record in the register of deeds office or, if registered property, in the registrar of titles office in the county where the mineral interest is located a verified statement citing this act and setting forth his address, his interest in the minerals, and either (1) the legal description of the property upon or beneath which the interest exists, or (2) the book and page number, in the records of the register of deeds or registrar of titles, of the instrument by which the mineral interest is created or acquired. Every five years thereafter the owner, or his successor in interest, shall renew the filing of a verified statement which shall contain the information as above required.

Subd. 3. This act does not apply to the following owners of mineral interests: The United States of America, the state of Minnesota, and any American Indian tribe or band owning reservation lands in this state.

Sec. 2. [93.53] Persons acquiring interest after September 30, 1974. Every person acquiring a mineral interest separate from the fee interest in the surface after September 30, 1974, shall file, in the same manner as required in section

1, a verified statement within 90 days after acquiring such interest notwithstanding the filing of a verified statement by the previous owner. Every five years thereafter the owner, or his successor in interest, shall renew the filing of a verified statement which shall contain the information as above required.

Sec. 3. [93.54] Notice of expiration of five year period. Not later than October 1 of each year, the register of deeds or registrar of titles shall mail notice of the expiration of the five year period to every owner of such interest whose five year period expires in the following calendar year. Notice shall be mailed to the address given in the latest recording of such interest and shall state the date of expiration of the five year period.

Sec. 4. [93.55] Failure to file or refile. If the owner of a mineral interest fails to file the verified statement required by section 1, before January 1, 1975, as to any interests owned on or before September 30, 1974, or within 90 days after acquiring such interests as to interests acquired after September 30, 1974, or if the owner fails to re-file such verified statement within five years after the last filing, the mineral may be leased by the commissioner of conservation as agent for the owner, his successor, and assigns, in the manner provided hereafter. The owner's failure to file the verified statement is deemed consent by the owner to such leasing.

Sec. 5. [93.56] Issuance of permits to prospect for and leases to mine minerals. From and after January 1, 1975, at the request of any person or public official the register of deeds or registrar of titles shall then determine if a statement has been filed with his office as required by sections 1 or 2. If a statement has not been so filed, he shall certify such fact to the commissioner of conservation. After receiving the

register of deeds or registrar of titles certification, and after determining that the mineral interest is owned separately from the fee title to the surface property upon or beneath which the interest exists, the commissioner of conservation may, in his discretion, and after giving notice as required by this section, issue permits to prospect for and leases to mine the mineral which may exist within the mineral interest in the same manner as he issues permits and leases to prospect for and to mine the mineral interests which have been forfeited to the state under tax forfeiture laws. At least 90 days before issuing a permit to prospect for minerals, or, where no permit is issued, at least 90 days before issuing a lease to mine the minerals which may exist within this mineral interest, the commissioner of conservation shall notify, in the same manner as provided for the service of summons in an action to determine adverse claims under Minnesota Statutes, Chapter 559, any owners of the mineral interests which appear of record in the offices of the register of deeds or registrar of titles in the county where the mineral interest is located. The notice shall state that the minerals are subject to prospecting and mining pursuant to this act. In case notice is given by publication, the last publication shall be made at least 90 days before issuing the permit or lease. No permit or lease may be issued for a mineral interest if, before the expiration of the 90 day period described above, the owner of the interest either files with the register of deeds or registrar of titles a verified statement as provided in section 1, subdivision 2, or commences an action to determine the ownership of the mineral interest. If, as a result of such action, it is subsequently determined by a final judgment or decree that the mineral interest or a part thereof is owned other than by the state, the state may not issue a permit or lease in regard to such interest

pursuant to this act unless the owner subsequently fails to comply with the filing requirements of this act within 90 days after the final judgment or decree is filed by the court. No permit or lease issued pursuant to this act shall afford the permittee or lessee any of the rights of condemnation provided in Minnesota Statutes, Section 93.05, as to overlying surface interests.

Sec. 6. [93.57] Obtaining benefits of permits or leases; procedure. An owner of a mineral interest for which the state has issued a prospecting permit or lease pursuant to this act may obtain the benefits of the permit or lease only in the following manner. At any time after a permit or lease is issued by the commissioner of conservation to prospect for or mine minerals pursuant to section 5, an action must be commenced to determine the ownership of the mineral interest included in the permit or related lease. If the ownership interests are subsequently determined by a final judgment or decree, the permit or lease shall be assigned or amended and assigned by the commissioner as follows. Upon application by the owner of the mineral interest or a part thereof, or his successor or assign, the commissioner shall assign the permit or lease or amend the permit or lease and assign to the applicant the interest in the permit or lease which corresponds to the interest adjudged or decreed to be owned by the applicant, his predecessor, or assignor. The applicant, his predecessor, or assignor, is not entitled to any royalties or rentals paid under the permit or lease before assignment. These rentals or royalties shall be retained by the state and the taxing districts to which they may have been distributed as payment for the management and leasing of the mineral interest prior to assignment. If rentals or royalties retained by the state are less than the total of all costs attributable to the leasing of the mineral

interest, the commissioner shall not assign the lease or interest in the lease until these costs, less any rental or royalty payments, are paid.

Sec. 7. [93.58] Publication of act. This act shall be published once during the first week of each month in a legal newspaper in each county in the months of October, November, and December of the year 1969 by the commissioner of conservation at county expense. This act also shall be published by the commissioner of conservation at least once in 1969 in two publications related to mining activities which have nationwide circulation. Failure to publish as herein provided shall not affect the validity of this act.

Approved May 27, 1969.